IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8003 OF 2006

Madhukar Mahadeo Fartade .. Petitioner

Versus

Ramchandra @ Pandit Shridhar

Kulkarni & Ors. .. Respondents

Mr.K.S.Dewal for petitioner

Mr.G.N.Salunke for respondent No.1.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 29th November 2007

P.C.

. This petition challenges an order passed by the trial court dismissing the application for amendment of written statement. The amendment

was sought during the course of hearing of the Regular Civil Appeal. The Regular Civil Appeal is remanded on the ground of limitation. All that the petitioner sought was leave to incorporate elaborate submissions on the issue as to how the suit or the suit claim is barred by limitation. The learned Judge has framed following points:-

(1) Whether there is necessity to amend the written statement of defendant No.2? No

(2) Whether the application should be allowed? No

(3) What order : As per final order"

2. In the elaborate order passed, he has said that the application deserves to be rejected because the conduct of petitioner original

defendant No.2 is nothing but such that he somehow or the other wants to prolong the matter. All pleas are already raised and they are available to him. Yet, he has sought leave to amend the written statement.

3. In my view, the learned Judge would have been well advised in adhering to the time schedule prescribed by this Court and dispose of the appeal rather than consuming valuable time in disposing of this application.

4. It is conceded before me that all that the petitioner seeks before me is to incorporate something in the written staetement on the point of limitation. The petitioners specifically states before me that he will not, on the basis of pleas being allowed to be incorporated, seek remand or re-trial of the matter nor will he pray for leading additional evidence. He would argue the matter on the basis of available record, if

the plea is allowed to be incorporated. I see no reason to reject this reasonable request but agreeing with the court below that these are prolonging tactics, I would impose heavy cost on the petitioner.

5. Accordingly, petition is allowed. Plea of limitation is allowed to be elaborated in the written statement with the above condition. Amendment to be carried out within one week from the date of receipt of copy of this order on a condition that petitioner pays cost to the appellant original plaintiff quantified at Rs.2000/-. Costs condition precedent. Appeal be now heard and disposed of expeditiously as possible and in any event within six months from the date the amendment is carried out. Petition disposed of. No costs.

(S.C.Dharmadhikari, J)